

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
BALLINGER, et al., : Docket #13cv04036
Plaintiffs, :
- against - :
ADVANCE MAGAZINE PUBLISHERS, :
Defendant. : New York, New York
July 6, 2015

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PROCEEDINGS BEFORE
THE HONORABLE HENRY PITMAN,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: ...Advance Magazine Publishers.
Counsel, please state your name for the record.

MS. RACHEL MEGEN BIEN: Good afternoon, Your
Honor, Rachel Bien --

MR. MICHAEL NOAH LITROWNIK: -- and Michael
Litrownik.

MS. BIEN: -- from Outten & Golden LLP for the
plaintiff.

HONORABLE HENRY PITMAN (THE COURT): Good
afternoon.

MS. ELISE MICHELLE BLOOM: Good afternoon, Your
Honor, Elise Bloom.

MS. NOA MICHELLE BADDISH: Good afternoon, Your
Honor, Noa Baddish.

MS. BLOOM: From Proskauer Rose for the defendant
and this is our client Elizabeth (indiscernible).

THE COURT: Good afternoon. All right. This
matter is on today for a fairness hearing in the matter of
Ballinger against Advance Magazine Publishers. Is there
anyone in the gallery who wants to be heard in connection
with the settlement? All right.

I mean, it's -- well, let me as counsel. Do
counsel have any feelings as to whether or not the Second
Circuit's decision last week in Glatt affects the settlement

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2 here in any way.

3 MS. BADDISH: Well I mean I think, certainly to
4 the extent that we identified a risk that, you know,
5 counseled in favor of resolution in this case, I think for
6 the plaintiffs that risk has, you know, there is clear word
7 from the Second Circuit now on the test that we'll apply as
8 well as risk relating to class certification.

9 So I think in our view, the decision, you know,
10 supports approval of this settlement and even goes father
11 towards indicating why this settlement is in the best
12 interest of the class here.

13 THE COURT: Okay. Ms. Bloom?

14 MS. BLOOM: I have nothing to add to that, Your
15 Honor.

16 THE COURT: Okay. I mean, because the class
17 certification here is, is on consent. I don't think the
18 Circuit's comments on closed certification impact the
19 settlement here. I don't think they impact the settlement.
20 All right.

21 I've considered -- there was, I think there were
22 two individuals who I think filed objections. There was a
23 Ms. Goldwasser (phonetic) and Ms. Batista (phonetic) as I
24 recall. And I've read their objections and I think
25 plaintiff's counsel is correct, that Ms. Goldwasser's

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objections are really objections to the action and not the fairness of the settlement. And I don't think she really addresses the fairness of the settlement at all.

And I mean, Ms. Batista takes issue with the amount of the settlement but I don't think her objections have substantial weight, especially after the decision Glatt. So I don't think the objections of either one are impediments to the approval of the settlement. All right. And I have not received any correspondence from anyone concerning the settlement.

There being no substantial objections I'm going to sign the proposed order submitted by plaintiff seeking certification of the settlement class, final approval of the class action settlement, approval of the FLSA settlement.

The provision with respect to attorney's fees, I'm not going to approve or disapprove -- I'm not disapproving it but I think it needs some further consideration in light of Judge Pauley's decision in Sakiko Fujiwara.

All right. Is there anything else plaintiff's counsel wants to add?

MS. BIEN: I guess there are two things. One was that there are still some ongoing issues relating to the Claims Administration process. In particular, the Claims Administrator only recently sent out deficiency notices to a

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2 group of the people who submitted claim forms indicating
3 that there were some problems with their claim forms and so
4 they needed to cure them. And that's ongoing.

5 And in addition, defendants are also reviewing
6 some of the claim forms that were submitted by people who
7 were not on the class list or not in the class list
8 information that they provided to the Claims Administrator.

9 And so the parties have been, on an ongoing basis,
10 communicating about these issues. And so what we'd like,
11 if the Court agrees, and what we built into the order was
12 that we continue to carry out that process until -- we had
13 some -- we had learned that the Claims Administrator who was
14 supposed to send some deficiency forms and having done it in
15 a timely fashion. And so we agreed that those forms would
16 go out.

17 The deadlines right now are July 15th for people
18 to submit supplemental forms and then the defendants have
19 until July 29th to raise any issues with regard to those.
20 And to the extent we can resolve them we would bring them
21 before Your Honor.

22 So with that, we ask that the Court not actually
23 enter the final approval order until that process ends so
24 that the effective date would be tied to when the Court
25 actually enters the order.

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THE COURT: All right. Can one of you then just send me a letter on the 29th telling me -- the 29th is when you should have this wrapped up, correct?

MS. BIEN: The 29th is the last date; that's correct.

THE COURT: Right. So I guess maybe the 30th or the 31st just send me a letter telling me whether it's been resolved or whether we need to do something else. I won't sign the order today then.

MS. BIEN: Okay.

THE COURT: But if one of you can just sort of send me a reminder on the 30th or the 31st that would be helpful.

MS. BIEN: Sure. The only other -- I didn't want to address the Court's -- the comments about Judge Pauley's decision in Fujiwara. And if there was anything that the Court would like us to supplement in our papers on that or submit something specifically on that we would be happy to do so. There may have been enough information in the papers already.

THE COURT: I'm not sure I need anything further but if I do I'll certainly let you know.

MS. BIEN: Thank you. I appreciate that.

THE COURT: All right. Anything else from either

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side?

MS. BADDISH: No, Your Honor.

MS. BIEN: None from us. Thank you.

THE COURT: All right. Thank you all and thank you for all your hard work in bringing the matter to closure. And I meant every word I said in my decision in December about the quality of representation on both sides here, so.

MS. BIEN: Thank you, Your Honor.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Ballinger v Advance Magazine Publishers, Docket #13cv4036, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature_____

Date: July 9, 2015